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General Principles of European Union Law: their Origins and Role in the Evolution of European Integration

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I principi generali del diritto sono concetti diversi a seconda delle diverse posizioni nella dottrina giuridica e, in particolare, a seconda dei paesi in cui sono utilizzati nel diritto positivo. I principi generali del diritto dell'Unione europea, simili come concetto a quelli del diritto pubblico francese, sono stati sviluppati dalla Corte di giustizia dell'Unione europea sin dalle sue prime sentenze, in particolare grazie all'influenza dell'avvocato generale Lagrange, ex membro del Conseil d'État francese. Le fonti materiali di tali principi si trovano nei trattati dell'UE, nel diritto internazionale, nel diritto derivato dell'UE e nel diritto degli Stati membri, come nel caso dei «principi generali comuni agli Stati membri». La loro fonte formale è solitamente la giurisprudenza della Corte di giustizia dell'Unione europea; pertanto, il loro posto nella gerarchia delle norme del diritto dell'UE è immediatamente al di sotto del diritto primario, ma al di sopra di tutte le altre fonti del diritto UE. A titolo illustrativo, vengono presentate le tradizioni costituzionali comuni degli Stati membri e i principi generali del diritto amministrativo dell'UE. Il ruolo dei principi generali del diritto dell'UE di fronte all'attuale policrisi deve ancora essere analizzato dalla dottrina.

General principles of law are different concepts according to different strands of scholarship and especially according to the countries where they are used in positive law. General principles of EU law, which are similar as a concept to those of French public law, have been developed by the Court of justice of the EU since its first rulings, especially due to the influence of Advocate general Lagrange, a former member of the French Conseil d'État. The material sources of those principles are to be found in the EU treaties, in international law, in secondary EU law and in the law of member states, as is the case of "general principles common to the member states". Their formal

source is usually the jurisprudence of the CJEU; therefore, their place in the hierarchy of norms of EU law is immediately below primary law, but above all other sources of EU law. As illustrations, Common Constitutional Traditions of the Member States as well as general principles of EU administrative law are presented. The role of general principles of EU law in face of the current polycrisis has yet to be analysed by scholarship.

Summary: 1. The concept of general principles of law in scholarly discussion and in the positive law of EU Member States.- 2. Material and formal sources of general principles of EU law.- 3. The case of Common Constitutional Traditions of the Member States.- 4. The case of general principles of EU administrative law.- 5. The role of general principles of EU law in the face of the current polycrisis.

1. The concept of general principles of law in scholarly discussion and in the positive law of EU Member States

There is a longstanding scholarly^[1] discussion on the difference between legal principles and legal rules, where writers such as Robert Alexy^[2], Ronald Dworkin^[3], Herbert Hart^[4], or Brian Leitner^[5] have been in some way the leading authors since the second part of the twentieth century. I am not taking a position on these debates.

Subsequent to Ronald Dworkin's core theory of legal principles, stringent debates on concept and function of these possibly new kind of "norms" have been raised. There is nonetheless no scholarly common understanding, so far, of what they are, where they come from, and how exactly they should be dealt with. The only common point on which scholarship might agree is already at the very core of Hart's writings. This common point is, to use Hart's words, that "principles" are standards which are "non-conclusive", as they do not apply in an all-or-nothing fashion even when their factual predicate is satisfied. They do not conclusively decide the matter at hand and must be weighed by the judge against other principles in reaching a decision. Further, a distinction set out already in Hart's theory can usefully be recalled here, between principles which are legally binding in virtue of "pedigree" – which is the case for the so called "principles of

the common law” whose pedigree stems from having repeatedly called upon by common law courts from England, its former colonies and Commonwealth countries – and “non-pedigreed principles” which are not legally binding, as underlined by Leitner.

From this standpoint, one thing is certain: if we are to apply Hart’s theory, general principles are unquestionably pedigreed in the context of EU law by virtue of their specific origin in CJEU case law, and for some of them in the law of member states. This being said, it is important to underline that the impact of the of common law ways of thinking on EU law is quite limited, contrary to what some authors are indicating, who forget that especially French administrative law has been developed as a judge-made law. Typically, Federico Mancini, who was the Italian Advocate General, from 1982 to 1988 has shown that he had hardly knowledge of the importance of general principles in the case-law of the *Conseil d’État* when he said, commenting on some formal aspects of the CJEU’s jurisprudence in a speech in Australia in the nineteen nineties, that : «[...] *the main cause of [the formal] aspects of our jurisprudence is, I believe, the powerful influence exerted on the Court by its early models, the French Council of State and Court of Cassation. Throughout the 1950s and early 1960s, indeed, the judgments of the European Court looked like a carbon copy of the decisions of these great judicial bodies: same conceptual frames of reference, same idiosyncrasies (such as a reluctance to use general principles of law), same method of exposition [...]*» (emphasis added).

This statement might be due to the fact that in Mancini’s time the French AGs, first Simone Rozès and then Marco Darmon, were civil judges, not members of the *Conseil d’État*.

Turning to non-common law legal systems, it has to be stressed that the influence of Roman law has been and remains particularly important in some European continental legal systems. This is the case especially with the codification of civil law, as with the German Civil Code (BGB), which entered into force on 1 January 1900 and is organised in a general part dedicated to principles and a special part where rules are developed; principles are particularly useful in the absence of specific, clear rules.

Also in Italy, the concept of general principles of law is quite often derived from concepts that find their origins in Roma Law, although the Italian Civil Code of

1865, which was influenced by the French type of codification of the *Code Civil* enacted by Napoleon in 1804 did not contain such a general part. As far as public law is concerned, it is worthwhile to refer to Vittorio Emanuele Orlando (1860-1952) one of the foremost important Italian scholars in public law of the nineteen/twentieth. In the introduction of his handbook “Principles of Constitutional Law”^[7], Orlando explained that he tried to delineate the principles that were common to the constitutional law of modern states, following the example of the German scholars Gerber^[8] and von Stein^[9]. In their view, establishing what are general principles of public law serves mainly a scientific purpose. Of particular relevance to the topic of constitutional principles is the jurisprudence of the Italian Constitutional Court which, as soon as in its first judgment – n°1, 1956 – has used the principles embedded in the Constitution of 1947 in order to annul legislation adopted during the fascist period^[10].

In France, general principles of law (*principes généraux du droit*) have first and foremost been identified and used by the *Conseil d’État*. The French supreme administrative court only started to formally use expressly the wording *principes généraux du droit applicables même en l’absence de texte* (general principles of law which apply even in the absence of a written provision) since *Aramu*, 26 October 1945; however, it applied the concept in its case law at least since it became formally a Court judging in the name of the people in 1872. The main reason, to my mind, is that the *Déclaration des droits de l’Homme et du Citoyen* (Declaration of the Rights of Man and Citizen) of 1789 was not formally in force during the third Republic (1970-1940); therefore, the *Conseil d’État* used its content without expressly referring to the text. As Edouard Laferrière – who was chairing the judicial section of the *Conseil d’État* since 1879 – wrote in his *Traité de la juridiction administrative et des recours contentieux* published 1887^[11], that the Conseil’s judgement «are based, when written provisions are missing, on traditional principles, written or not, that are somehow inherent to our public law and administrative law»^[12]. Indeed, the *Commissaires du gouvernement* (which have served as model of the CJEU’s AG) already referred to *principes généraux de notre droit*. After *Aramu*, the French administrative courts more and more often referred explicitly to principles that the *Conseil d’État* expressly qualifies as *principes généraux du droit*.

In EU law, to our knowledge, the first case where a reference to general principles

was made, was in AG Lagrange's opinion in *Assider*^[13], delivered on 11 November 1954, one month before adoption of the Courts two first judgements^[14]. Lagrange referred to the *principe de finalité* (usually translated as principle of specific purpose) and explored how it was applied in the case of Member States' courts. According to Lagrange (p. 152 of his opinion): «*Unlike the rights of private individuals, the exercise of which, at least in a system of freedom, is limited only by the need to respect the rights of other private individuals (apart from prohibitions imposed by law), the rights of public authorities, which are as a matter of fact powers, can be exercised only for the purposes for which those powers have been conferred on them. These ends are obviously, in the first place, the general interest, which is called the "good of the service", for which the Administration is made and which is nothing other than a manifestation of the common good, the foundation of the social order. But to this must be added a notion of speciality, which is simply dictated by the need for good order and organisation. Government has many and varied tasks, and each of the public services has a particular task to perform, a particular goal to pursue. In fact, there are administrations within the Administration with a capital A. The powers conferred on each of them are therefore also limited (even if no text says so) by a purpose of its own*»^[15].

This first opinion ever of an AG of the Court of Justice is particularly significant as it is relying on both the concepts of general principles of law and of conferral, which are paramount to the EU legal system.

Also, in opinions of AG Karl Roemer – who had been appointed as on 2 February 1953, while Lagrange had been appointed on 4 December 1952 – one finds from time to time a reference to a general principle; this is due to the fact that one of the parties explicitly invoked a principle. As a matter of fact, Roemer who had been a civil judge and later acting counsel in Germany before his appointment at the Court, was probably familiar only with the concept of general principles of the BGB.

The influence of the *Conseil d'État*'s concept of *principes généraux du droit* on the concept of general principles of EU law is particularly due to AG Lagrange in the early times, and also later to AG Alain Dutheillet de Lamothe – another member of the *Conseil* – with the development of the concept of common constitutional traditions as general principles, as we will see in section 3 of this paper.

The line of reasoning exposed by AG Lagrange in *Assider* was further applied by himself especially in his opinion of 14 June 1957 in *Algera*^[16] where he developed again, in more detail, the comparative method which was also used by the Court in its judgement, following Lagrange's opinion. This has become a major tool for the establishment of a fundamental category of general principles of EU law, i.e. general principles common to the laws of the member states.

At the same time indeed, the legal experts who were drafting the EEC treaty signed on 27 March 1957 drew on that same concept to replace the complex provision on liability of Article 40 ECSC, which was very difficult to understand for others than French administrative lawyers. The EEC provision on non-contractual liability reads – without change since the Treaty of Rome – as stated in Article 340 second indent, TFEU «[i]n the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties» – a wording that is reflected in Article 41 Charter of fundamental rights on the right to good administration.

This being said, it is only in *Lachmüller*, 15 July 1960, that the Court itself – following the Opinion of AG Roemer – stated expressly «it is consequently necessary to rely on the general principles of law»^[17], as well as in *S.N.U.P.A.T.*, 22 March 1961^[18] – following the Opinion of AG Lagrange. And it is in *Stauder*, 12 November 1969, following again the Opinion of AJ Roemer, that the Court stated for the first time «The protection guaranteed by fundamental rights is, as regards Community law, assured by various provisions in the Treaty, such as Articles 7 and 40(3); this is written law supplemented in its turn by unwritten Community law, derived from the general principles of law in force in Member States»^[19]. *Stauder* is a fundamental judgment concerning not only the general principles of law but also respect for fundamental rights by the institutions of the Union, that of the Court.

2. Material and formal sources of general principles of EU law

There is a very abundant literature on general principles of EU law, most often either trying to establish typologies of such principles or trying to apply concepts

of legal theory to EU principles, such as the differentiation between “principles” and “rules”. An opposition between “principles” and “rights”, has been acknowledged by Article 52 (5) of the Charter in its version of 2004, without further amendments to the text of the Charter that would give consistency to this differentiation, which was not indicated in 2000. That distinction has been focusing much attention since the European Convention 2002-2003, during which it was adopted to give satisfaction to representatives of the UK Government and Parliament.

Scholarship has not, however, adopted a common general view about the rank of general principles in the hierarchy of sources of EU law^[20], i.e. the issue we are interested in with this section.

There does not seem to be any general agreement in scholarship as to the meaning and usefulness of the concept of hierarchy of norms in Community law and nowadays in European Union law. The issue of the rank of general principles of EU law has been blurred, since the treaties refer nowadays to general principles of law through two provisions and related references.

First, as already mentioned, Article 340, second indent TFEU refers to «*the general principles common to the laws of the Member States*» and Article 41 (3) of the Charter restates the same wording.

Second, with the entry into force of the Lisbon Treaty, Article 6 (3) TEU is stating that: «*Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law*». Article 6 (3) TEU is also being referred to in the second indent of the introduction Protocol (No 24) on asylum for nationals of member states of the European Union.

With the entry into force of the Lisbon Treaty on 1 December 2009, the EU legal system has been faced with some unprecedented changes in its system of hierarchy of norms. The treaties include since then a differentiation between legislative and non-legislative acts, as well as a system of different levels of normative acts (e.g. delegated acts and implementing acts in arts. 290 and 291 TFEU); the Charter of fundamental rights has «*the same legal value as the Treaties*» (Article 6 (3) TEU); finally, there is a reference in primary law to the “general principles of the Union’s law” in Article 6 (3) TEU. Those changes

represented a challenge for most EU lawyers since the time when the draft Constitutional treaty was discussed in the European Convention 2002-2003 as far as regards their comprehension, their systematisation and their application in positive EU law. The relevant issues had a flavour of *déjà vu* for specialists of French public law, as the country had been faced with a similar kind of changes with the entry into force of the Constitution of 4 October 1958.

The following thoughts are being inspired by the French precedent and are especially based upon the reasoning expressed in two articles published by René Chapus in the 1960s, and which still are nowadays being considered as giving the key to understanding the contemporary system of norms in French constitutional and administrative law^[21].

To clarify the issue of hierarchy of norms in positive law, it is indispensable, as demonstrated by Chapus for the case of French law, to have clearly in mind the difference between the hierarchy of legal norms and the hierarchy of legal sources, and as far as the latter are concerned, between formal and material sources of law.

The existence of a hierarchy of legal norms means that there is a relationship between two legal norms, according to which the legitimacy of norm B is conditioned by its conformity with another norm A. There might be different rationales to this hierarchy: norm A may be considered a more important norm, or a better one, due to its content which expresses fundamental values, as happens with norms of “natural law”; norm A may be considered more important because it is set down in a legal instrument which is formally superior to the instrument into which norm B is set down, as happens in parliamentary or congressional democracies where Acts of Parliament or of Congress usually have a superior position to those of the Cabinet or of the President because Parliament or Congress are composed of representatives who have been democratically elected to adopt the laws of the Country. An excessively formalistic approach to the hierarchy of legal instruments has been used in many authoritarian regimes during the Twentieth century to simulate a “*Rechtsstaat*”, hence the need to complement a formalistic approach by a value-based one; in public international law, where the concept of hierarchy does not play an important role, concepts stemming from natural law are being used not only by scholars but also in State practise to try and consolidate values such as human dignity.

This being said, I have the feeling that contemporary EU law literature does quite often make a confusion between a formal hierarchy of norms and a value-based material hierarchy of norms. Although Chapus was by no means a legal theorist, the approach he used is, to my view, better adapted to solving the issues of EU Law than general legal theory, which tends to be more and more and more often close to political theory or philosophy, while not getting to grips with technical issues of positive law.

The hierarchy of norms is the consequence of the formal character inherent to the instrument that contains legal norms: the content of a statute, for instance, to be legitimate, must conform to the content of the constitution. Such a hierarchy of legal sources is due in the first place to the existence of a hierarchy between the institutions that produce norms: any norm adopted by Government must be in compliance with any norm adopted by the Parliament. In a vast number of democratic constitutions the position of Parliament is superior to that of the Executive, and therefore delegated legislation needs to be based upon statutes. More importantly, maybe, written constitutions are usually submitted to a more stringent procedure for their amendments than the procedure applicable to the adoption of statutes.

The CJEU refers to a general principle of EU law to review the lawfulness of EU secondary legislation as well as the lawfulness of actions of member states, or to give member states' judges the parameters they need to assess the conformity of their own internal law to EU law.

The substantive source of a general principle of EU law is the locus where a principle can be found – the ECHR, constitutional provisions of member States, international treaties, etc. – instead of the formal source, which is always the Court's judgment where the principle is consecrated as a general principle of EU law.

Member states' law is the substantive source of a significant part of the general principles of Union law. The Court has never deemed it necessary that the same principle be present in all the legal systems of the Member States to consider it as a general principle of EU law. The Court also refers to norms of EU primary or secondary law as an expression of a principle that has a more general scope than the wording of the provision (its substantive source) in which it explicitly appears.

Not all principles of EU law have the status of a general principle; only the CJEU has the authority to establish that status. Moreover, although it is true that nothing impedes the EU legislature or its institutions to assert that a principle is a general principle of law, their interpretation still cannot have the same authority as the interpretation by the CJEU because only the Court has the power to establish whether an act coming from the various institutions conforms with the treaties. As it is the Court who enounces “general” principles of EU law, these always have a higher rank than secondary EU law: the incompatibility of a provision of secondary law with a general principle of EU law is one of the most important reasons why acts of secondary EU law are annulled by Court. This being said, general principles of EU law remain inferior to primary law, as the Court has no power to oppose a Treaty amendment that has the scope or effect of repealing a general principle of EU law.

An established, authoritative catalogue of principles of EU law does not exist. Tridimas^[22] concentrates his analysis on principles linked to the rule of law, i.e., Equality, Proportionality, Legal Certainty and Protection of Legitimate Interests, Fundamental Rights, Rights of Defence, Effectiveness, Liability of EU Institutions and State Liability for Breach of EU Law.

Article 6 (3) TEU provides: «*Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law*». This is typically a reference to the material source of general principles. That has also a very specific consequence, namely that the CJEU cannot choose between the rights guaranteed by the ECHR: all those rights have the status of general principles of EU law, even if the Court has not yet stated it.

General principles of EU law are also used by the CJEU to interpret provisions of primary law, and therefore they are also binding to Member States in the same way as primary law. This sometimes provokes some frictions with Member States' politicians, scholarship or courts, as happened typically with *Mangold*, 22 November 2005. In its judgment responding to a referral from a German Court where the plaintiff, *Mangold*; was complaining about a discrimination regarding his age, the Court had stated that: «74. [...] *above all, Directive 2000/78 does not itself lay down the principle of equal treatment in the field of employment and*

occupation. Indeed, in accordance with Article 1 thereof, the sole purpose of the directive is “to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation”, the source of the actual principle underlying the prohibition of those forms of discrimination being found, as is clear from the third and fourth recitals in the preamble to the directive, in various international instruments and in the constitutional traditions common to the Member States.

75. The principle of non-discrimination on grounds of age must thus be regarded as a general principle of Community law. Where national rules fall within the scope of Community law, which is the case with Paragraph 14(3) of the [applicable German law], as being a measure implementing Directive 1999/70 [...] and reference is made to the Court for a preliminary ruling, the Court must provide all the criteria of interpretation needed by the national court to determine whether those rules are compatible with such a principle [...]»^[23].

Three years later Roman Herzog, former President of the German Constitutional Court and of the Federal Republic of Germany fiercely criticized the judgment in address published in the German daily *Frankfurter Allgemeine Zeitung* 8 September 2008 entitled “Stop the European Court of Justice The competences of the Member States are being eroded. The increasingly questionable judgements from Luxembourg call for a judicial supervisory body”^[24]. He and his co-author, a German practicing lawyer, took the case of *Mangold* as a typical case where the Court seriously exceeded its jurisdiction. They wrote: «*this “general principle of Community law” was fictitious. Only in two of the (then 25) Member States - Finland and Portugal - is a ban on age discrimination mentioned in the constitution; and contrary to the ECJ’s succinct assertion, nothing is known of a ban in even one international treaty. It is therefore easy to explain why the ECJ refrained from providing any further details*».

Quite strikingly, Herzog, who had chaired the Convention of 2000 which drafted the EU Charter of fundamental rights, did not even hint at Article 21 of the Charter, which says «*1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited*».

3. The case of Common Constitutional Traditions of the Member States

The first time the words “constitutional traditions common to the Member States” were used in EU law was in *Internationale Handelsgesellschaft*, 17 December 1970^[25]. The judgement responded to a referral for preliminary ruling from the Administrative Court of Frankfurt am Main, about the validity of a system of export licences and deposits created by two EEC regulations of 1967, on the common organization of the market in cereals and on import and export licences. As stated by the Court quoting the referral: «2 [...] *According to the evaluation of the Verwaltungsgericht, the system of deposits is contrary to certain structural principles of national constitutional law which must be protected within the framework of Community law, with the result that the primacy of supranational law must yield before the principles of the German Basic Law. [...] the system [...] runs counter to the principles of freedom of action and of disposition, of economic liberty and of proportionality arising in particular from Articles 2 (1) and 14 of the Basic Law. The obligation to import or export resulting from the issue of the licences, together with the deposit attaching thereto, constitutes an excessive intervention in the freedom of disposition in trade [...].*

3 *Recourse to the legal rules or concepts of national law in order to judge the validity of measures adopted by the institutions of the Community would have an adverse effect on the uniformity and efficacy of Community law. [...] the validity of a Community measure or its effect within a Member State cannot be affected by allegations that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure.*

4 *However, an examination should be made as to whether or not any analogous guarantee inherent in Community law has been disregarded. In fact, respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community».*

A.G. Dutheil de Lamoignon – who came from the French *Conseil d’État* – had started by indicating in his opinion: «[...] *a prior question is immediately raised,*

as to what legal source this principle must be taken from in order to be applied against a measure issued by the Community authorities.

Three arguments on this have been put forward: (1) that of the Frankfurt court, which states that since the principle of proportionality results from the combined effect of Articles 2 and 12 of the Basic Law [...], Community measures may not infringe those constitutional provisions, [...] before referring this question to the Court of Justice, it has held invalid, as contrary to the Basic Law, the provisions disputed today before the Court;

(2) that outlined by the Verwaltungsgerichtshof of the Land of Hesse, which finds the legal source of this principle of proportionality in the unwritten law of the Community, in the general principles of Community law;

(3) finally that which I suggest to the Court which would in this case find the source of this principle in an express and very clear provision of the Treaty»^[26].

The latter provision is now Article 40 TFEU: «*The common organisation shall be limited to pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Union*».

In his Opinion Dutheillet de Lamothe developed the second argument, which was eventually followed by the Court, even though the A.G. did not prefer it: «*Does that mean that the fundamental principles of national legal systems have no function in Community law? No. They contribute to forming that philosophical, political and legal substratum common to the Member States from which through the case-law an unwritten Community law emerges, one of the essential aims of which is precisely to ensure the respect for the fundamental rights of the individual. In that sense, the fundamental principles of the national legal systems contribute to enabling Community law to find in itself the resources necessary for ensuring, where needed, respect for the fundamental rights which form the common heritage [le patrimoine commun] of the Member States*»^[27].

The expression “common heritage”/“*patrimoine commun*” stems from the Statute of the Council of Europe and the European Convention of Human Rights.

Let me also recall that the Court has never deemed it necessary that the same principle be present in all the legal systems of the Member States in order to be considered as a general principle of member states’ law; it chooses the principles that are more functional to the aims of EU law.

As already recalled, Article 6 TEU provides that «[t]he rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions». The official Explanations to the Charter state in this regard that: «The rule of interpretation contained in paragraph 4 has been based on the wording of Article 6(3) of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., [...]). Under that rule, rather than following a rigid approach of “a lowest common denominator”, the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions»^[28].

With the proclamation of the Charter on 12 December 2000 two more references were added, albeit in a document that had not yet binding force. In the Preamble: «This Charter reaffirms, [...] the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the ECHR, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the CJEU and of the European Court of Human Rights». And in Article 52(4) on Scope and interpretation of rights and principles: «In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions».

The Court did not refer to the Charter as long as it was not binding. After the Lisbon Treaty had come into force, the Charter has become binding. Since then, when the Court refers to constitutional traditions, it was usually in conjunction with the Charter and the ECHR.

The reference to common constitutional traditions as general principles of EU law remains particularly useful when the Charter is not applicable, as illustrated with the right to good administration, which is guaranteed by Article 41 of the Charter. When asked to apply that provision in a preliminary ruling, the Court usually replies that: «It is clear from the wording of that provision that it is addressed not to the Member States but solely to the institutions, bodies, offices and agencies of the European Union [...]. It follows that Article 41 of the Charter is irrelevant to the case in the main proceedings [...], nevertheless, that provision

reflects a general principle of EU law to the effect that the right to good administration encompasses the obligation of the administration to [e.g.] give reasons for its decisions»^[29].

4. The case of general principles of EU administrative law

An established authoritative catalogue of principles of EU administrative law does also not exist^[30]; there is neither an instrument of primary or secondary EU law providing for such a catalogue, nor are there CJEU rulings or AGs' opinions that establish a fully-fledged catalogue. Moreover, there is no consensus in scholarship about such a list. Many principles are embedded in the EU Treaties and in the Charter and have acquired the status of "general principles of European Union law", having been qualified as such by the EU courts.

In its *Resolution of 9 June 2016 on a Proposal for an open, efficient and independent European Union administration*^[31], which is based upon Article 41 of the Charter on the Principle of good administration, the European Parliament made a proposal for a regulation on EU administrative procedure. The proposal indicates in recital 17 that: «*The procedural administrative rules laid down in this Regulation aim at implementing the principles on good administration established in a large variety of legal sources in light of the case-law of the Court of Justice of the European Union. Those principles are set out here below and their formulation should inspire the interpretation of the provisions of this Regulation*».

The recitals further indicate as relevant principles: the rule of law (recital 18), the principle of proportionality (19), the right to good administration (20 to 31), the right to an effective remedy (32 to 34), transparency and legal certainty (35, 36, 37, 39 and 42), the protection of legitimate expectations (37 and 41), as well as the protection of language rights (38).

Special attention has to be given to the rule of law and its corollaries, first and foremost to the principle of proportionality and to the protection of legitimate expectations, which have been developed by an abundant jurisprudence of the CJEU.

The rule of law is a principle that forms part of the Union's values, as recalled explicitly in the Preamble and Article 2 TEU and in the Preamble to the Charter. An official definition of the rule of law in EU law can be found in the third

recital of the *Regulation 2020/2092 of 16 December 2020 on a general system of conditionality for the protection of the Union budget*: «The rule of law requires that all public powers act within the constraints set out by law, in accordance with the values of democracy and the respect for fundamental rights as stipulated in the [Charter] and other applicable instruments, and under the control of independent and impartial courts. It requires, in particular, that the principles of legality implying a transparent, accountable democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts; and separation of powers, be respected».

As stated in recital 42 of the already quoted, the EP's proposal of 9 June 2016: «The principle of legal certainty requires Union rules to be clear and precise. That principle aims at ensuring that situations and legal relationships governed by Union law remain foreseeable in that individuals should be able to ascertain unequivocally what their rights and obligations are and be able to take steps accordingly. In accordance with the principle of legal certainty, retroactive measures should not be taken except in legally justified circumstances».

The CJEU defines that principle as requiring «that legal rules be clear and precise and aims to ensure that situations and legal relationships governed by Community law remain foreseeable»^[32]. The Court derives a number of corollaries from this, which are articulated in an equivalent number of principles of EU law. These include, in particular, the principle of non-retroactivity of EU acts and the principle of the protection of legitimate expectations.

Article 47 of the Charter, which is based upon a rich and well-established previous case-law of the CJEU, reaffirms the right to an effective remedy and to a fair trial in the following words: «Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice».

The Court has reiterated since *Nold*, 14 May 1974^[33], that the right to protection

forms part of the general principles of law deriving from the constitutional traditions common to the Member States and that it is enshrined in the ECHR.

Long before the proclamation of the Charter on 12 December 2000, the Court of Justice continuously emphasised that individuals must be guaranteed and able to benefit from effective judicial protection of the rights conferred on them by the Union's legal order, especially in *Heylens*, 15 October 1987^[34]. In *Inuit Tapiriit Kanatami*,^[35] 3 October 2013, the Court specified (para 103-104) that whereas neither the TFEU nor Article 19 TEU «*intended to create new remedies before the national courts to ensure the observance of European Union law apart from those already laid down by national law [... the] position would be otherwise only if the structure of the domestic legal system concerned were such that there was no remedy making it possible, even indirectly, to ensure respect for the rights which individuals derive from European Union law, or again if the sole means of access to a court was available to parties who were compelled to act unlawfully*».

The CJEU has referred to the principle of proportionality from the very beginning of its case-law, in *Internationale Handelsgesellschaft*^[36], and has gradually established it as an essential tool for judicial review, applied to almost all areas of EU law. An analysis of the case-law indicates that it is, in fact, the principle that is most frequently invoked by parties and examined by the CJEU.

When first referring to the principle of proportionality, in its case-law of the nineteen fifties and sixties, the Court borrowed it clearly from German law. This appears as soon as 1959 in *Fédération Charbonnière de Belgique*^[37]. In the CJEU case-law, the proportionality test is applied to all measures adopted by the EU Institutions.

The CJEU jurisprudence on protection of legitimate expectations began to develop itself, in its core reasoning, already well before the accession of the UK to the Communities in 1973. The principle has been referred to, in fact, since the very early case-law, firstly as a sort of sub-principle of the rule of law. As of today, the principle of legal certainty and the principle of protection of legitimate expectations have grown autonomous from one another and remain so even when they are referred to jointly in the CJEU case-law. Many indirect references to legitimate expectations and the need to protect them are to be found in the very early ECJ case-law, like for example *Algera*^[38]. The first judgment where the need for protection of legitimate expectations is explicitly referred to as such by

the Court of Justice is a case of 1965, *Lemmerz-Werke* ^[39].

Individuals and undertakings have, since the very beginning of the EU case-law, regularly claimed the protection of legitimate expectations, especially for the case when the legislator and/or the public administrations change the rules that determine or influence their private and/or economic life.

A thorough analysis of the CJEU case-law in this matter shows that, under EU law, there are basically three types of situations where the need to protect legitimate expectations may arise in an administrative law context. The first case is that of the revocation/withdrawal of a decision adopted by a public authority. This may affect citizens' rights and privileges in as much as the previous decision is replaced by a new superseded one, which subsequently mutates the status and influences those rights and privileges differently. A second case is the so-called "breach of assurance": in some cases, the public authority may commit to making certain policies and adopt certain decisions to a specific matter, but in contrast to this, it acts differently and thereby changes the status quo. The third case is that of changes in consistent practice. In all the above-mentioned cases, there is a public authority that has induced a person to rely upon its representations or conduct so that, either the authority must honour the expectations created by its representation or, at least, it must compensate the person affected for his reliance. As to the possible intertwine of legal certainty and legitimate expectations, according to now settled case-law *«the principle of legal certainty is a fundamental principle of EC law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly»* ^[40].

Furthermore: *«In addition, the right to rely on the principle of protection of legitimate expectations presupposes the fulfilment of three conditions. First, precise, unconditional and consistent assurances from authorised and reliable sources must have been given to the person concerned by the administration. Secondly, those assurances must be such as to give rise to a legitimate expectation in the mind of the person to whom they are addressed. Thirdly, the assurances given must comply with the applicable standards»* ^[41].

5. The role of general principles of EU law in the face of the current polycrisis

According to a recent literature survey ^[42] : «Complexity theorists Edgar Morin and Anne Brigitte Kern coined the term “polycrisis” over two decades ago. They argued that the most “vital” problem of the day was not any single threat but the “complex intersolidarity of problems, antagonisms, crises, uncontrollable processes, and the general crisis of the planet” (Morin & Kern, 1999, p. 74). More recently, sustainability scholar Mark Swilling (2013, 2020) used “polycrisis” to capture the complex interactions between crises in the global political economy that multiply those crises’ overall impact. In the 2010s, European scholars and leaders (most notably then-President of the European Commission Jean-Claude Juncker) adopted the term to label the simultaneous migration, financial, and Brexit crises afflicting Europe (Juncker, 2018; Zeitlin et al., 2019). And in the months following Russia’s invasion of Ukraine in February 2022, Columbia University’s Adam Tooze and researchers at the Cascade Institute used “polycrisis” to characterize the complex interactions between the effects of the war, climate change, and the pandemic (Lawrence et al., 2022; Tooze, 2022).

But it was only at the World Economic Forum’s annual meeting in Davos in January 2023 that the polycrisis idea gained wide currency among commentators, policymakers, and business elites (Serhan, 2023). This surge in use engendered broad criticism of the concept and, unfortunately, more confusion than clarity (Homer-Dixon et al., 2023)».

On 26 March 2025, the European commission and the High Representative of the Union for foreign affairs and security policy published a Joint Communication on “Preparedness Union Strategy” ^[43] . The introduction of the Communication is stating among others that: «[...] the EU is more and more exposed to the consequences of climate change, continued environmental degradation and the risk of further pandemics. Europe is the continent that is heating the fastest. It has experienced devastating natural disasters, from floods to droughts and forest fires, coastal erosion, heat and cold waves and storms. If not addressed by improving the structural capacity of our societies to manage risks, the human, economic and social costs of climate change will only increase in the years to come including growing pressure from the negative impact of climate change in

other parts of the world, for example disruptions in trade routes and global supply chains. Climate, environment and security are strongly interlinked. [...]

None of the major crises of the past years were isolated or short-lived. They are part of a broader trend driven by long term political, economic, climatic, environmental and technological changes. Europe cannot afford to remain reactive».

When invited to lecture on General Principles of EU Law in Rome in February 2025, I was asked to deal with the issue of general principles of EU law and crises. Quite some literature on the legal framework the EU has developed to face global emergencies^[44], but to my knowledge the specific issue of general principles of the EU in this context has not been dealt with systematically by scholarship.

Among the few the principles referred to in literature there we find the “democratic principle” and the “principle of loyalty” (thus spelled: the English version of the EU treaties does not use the words “loyal cooperation” – contrary to the French, German, Italian and many other versions – but “sincere cooperation”). However, rather than a “principle of loyalty”, the CJEU’s jurisprudence refers to the “duty of sincere cooperation”.

The Joint Communication cited above proposes to establish a “Preparedness Union” that: *«will bring added value to Member States actions, namely by complementing national efforts, enhancing coordination and efficiency and fostering a culture of preparedness and resilience while fully respecting subsidiarity, national competences, and the specificities of Member States. It supports Member States’ obligation to act in a spirit of solidarity and help each other in all types of crises, in line with Art 222 TFEU»*^[45].

In this respect, it may be pointed out that the Court has stated that *«the spirit of solidarity between Member States [...] constitutes a specific expression [...] of the principle of solidarity, which is itself one of the fundamental principles of EU law»*. To what extent this general principle of EU law is relevant to the legal issues that arise from the current polycrisis remains to be assessed.

One specific principle that I have been working on recently is the principle of protection of the environment, embedded in Article 37 of the EU Charter of Fundamental Rights^[46].

With its enshrinement by the Charter of Fundamental Rights in whether there is a principle of environmental protection in European Union law was settled by the adoption of Article 37- Environmental protection^[47].

The principle of environmental protection is composed of other principles and rights of positive law, which can be invoked before the courts of the Union and its Member States. The principles of the rule of law apply to the protection of the environment, without it being possible to speak of an ecological rule of law. As is the case for all the rights and principles contained in the Charter, primary Union law and case law, its application is subject to the principle of proportionality, and it may come up against other fundamental rights that have the same rank.

The author of one of the main handbooks on EU environmental law devotes a chapter to the “principles in environmental and climate law”, which he introduces as follows ^[48].

«The question of the principles that guide environmental and climate law presents a number of ambiguities that should be addressed from the outset. Indeed, the concept of sustainable development, sometimes perceived as having a kind of ultimate supremacy in this area, is not one stricto sensu, any more than the “principle” of integrating environmental protection requirements into other policies. On the contrary, the precautionary principle, which is one, has been erected in a praetorian manner as a general principle, which reminds us, moreover, that general principles are intended to apply to environmental measures!»

This quote clearly illustrates the common problem that arises from the use of the concept of “principle”, since one easily moves from considerations of legal theory, or even philosophy, to considerations based strictly on positive law; in the latter case, there are also problems relating to the use of the concept of principle in public international law (with differences between treaty law, customary law and case law) a concept of EU law, or a concept of domestic law - with sometimes considerable variations from one state legal system to another.

The principle of protection of the environment is itself composed of several other principles or rights, i.e. the principles of prevention of correction at source, the polluter pays principle, the precautionary principle, the principle of sustainable development, the right to the environment, rights of nature, the right to water, the right to natural resources and the right of animals, as well as the principle of integration, the right to information and consultation and the principle of non-regression. Those principles are considered by a very abundant legislation of the EU consisting of more than a thousand EU acts ^[49], and by the jurisprudence of the CJEU. Those principles often contrast with other principles

or rights, such as the rights to property, to health, consumer rights, economic and social rights. At any rate, the application of the principle of protection of the environment is always subject to the principle of proportionality.

In my opinion, there are four main challenges ahead regarding the application of the principle of environmental protection. Firstly, the scope of the principle is in danger of being diminished due to the rise of climate sceptics in a number of important countries outside the EU and among its Member States. A second challenge, particularly visible since the end of 2023, is due to the contradiction between short-term industrial and agricultural interests and medium-term environmental protection.

A third challenge concerns case law. The abundance of provisions of primary law and especially secondary law of EU law intended for the protection of the environment means that the case law of the CJEU consists essentially of a casuistry concerning the interpretation and application of secondary law acts. This is not a criticism. In my view, nature conservation is a matter for political decision by democratically elected legislators and democratically accountable executives, and that it is a disservice to courts to ask them to decide in their place. Like medical remedies, legal remedies have side effects, some of which are undesirable. What was long referred to as the government of judges is nowadays referred to as the “judicialisation of public life” or sometimes the judicialisation of politics^[50].

The fourth challenge does not specifically concern environmental protection, but EU law as a whole: it is the question of its effective application. This depends on the authorities of the member states both at local and national level, not to mention the intermediate levels. The local level is certainly best placed to understand the specific features of the area whose environment is to be protected, but issues such as air or water pollution, or the protection of migratory birds, are by their very nature cross-border issues for which the “not in my backyard” reflex is particularly detrimental to effective protection.

Due to the formal source of general principles of EU law, they can be a very flexible instrument for the CJEU in dealing with different aspects of that crisis: climate change, migrations, economic crises. However, there is a risk for the Court if, and insofar as, the EU institutions cannot make the political choices necessary to deal with that crisis.

1. Given the author's authority on the subject and the peculiar nature of this work, the paper has been accepted for publication without submitting it to the standard external peer-review procedure. This paper is in fact the written development of a presentation made in Sapienza University, Rome, on 17 March 2025, in the framework of the following projects: PRIN 2022, CUP:B53D23010780006, Code:2022P3Y2H2; PNRR M4.C2.1.1; Jean Monnet Chair; project no. 101047903, Erasmus+; Jean Monnet Centre of Excellence PEGE, Sapienza University, project no. 101085488, Erasmus+. Coordinator of all the above-mentioned projects: Prof. Leone Niglia (Faculty of Law, Department of Scienze Giuridiche, Sapienza University, Rome). A version of this paper will later be published also as chapter of a book of essays edited by Prof Leone Niglia as output of the above projects.
2. R. Alexy, *On the Structure of Legal Principles*, in *Ratio Juris*, vol. 13, no. 3, September 2000, 294-304.
3. R. Dworkin, *The Model of Rules*, in *University of Chicago Law Review*, 3, 1967, pp. 14-46.
4. H.L.A. Hart, *The Concept of Law*, Oxford, Clarendon Press, 1994.
5. B. Leitner, *The Methodology Problem in Jurisprudence, Beyond the Hart/Dworkin Debate*, in *American Journal of Jurisprudence*, vol. 48, 2003, pp. 17-51.
6. See F. Mancini, *The Practice, Procedure and Working methods of the European Court of Justice*, Paper published by the Law and Justice Foundations of New South Wales, <https://lawfoundation.net.au/the-practice-procedure-and-working-methods-of-the-european-court-of-justice/>.
7. V. E. Orlando, *Principii di Diritto Costituzionale*, Florence, Barberà, 1889, pp. V-VI.
8. C. von Gerber, *Grundzüge eines Systems des deutschen Staatsrechts*, Leipzig, Verlag Bernhard Tauchnitz, 1865.
9. L. von Stein, *Die Verwaltungslehre. 1, Die Lehre von der vollziehenden Gewalt, ihr Recht und ihr Organismus: mit Vergleichung der Rechtszustände von England, Frankreich und Deutschland*, Stuttgart, Cotta, 1865.
10. See G. Grasso, *La sentenza n. 1 del 1956. Sessant'anni dopo*, in *Osservatorio Costituzionale*, 1, 2017, 2 gennaio 2017, https://www.osservatorioaic.it/images/rivista/pdf/GRASSO%20La%20sentenza%20n.%201%20del%201956%20per%20Osservatorio%20AIC_.pdf; T. Groppi, *The Constitutional Court of Italy: Towards a Multilevel System of Constitutional Review?*, in *Journal of Comparative Law*, 2008 3:2, pp. 100-118, https://www.astrid-online.it/static/upload/protected/Ital/Italy-constitutional-Court-JCL_T_Groppi.pdf.
11. Available on <https://gallica.bnf.fr/ark:/12148/bpt6k6503485t.texteImage>.
12. Les décisions du Conseil d'État «ont pour base, lorsque les textes font défaut, des principes traditionnels, écrits ou non écrits, qui sont en quelque sorte inhérents à notre droit public et administratif», quoted by Bernard Stirn, président de la section du contentieux in *Les principes généraux du droit dans la jurisprudence du Conseil d'État*, E. 2018, file:///C:/Users/jacqu/Downloads/discours_B-STIRN_20180216.pdf.

13. Court of Justice, judgment of 11 February 1955, Case 3-54, *Associazione Industrie Siderurgiche Italiane (ASSIDER) v High Authority of the ECSC*, opinion under ECLI:EU:C:1954:6.
14. Court of Justice, judgment of 21 December 1954, Case 1-54, *French Republic v High Authority of the ECSC*, ECLI:EU:C:1954:, and judgment, Case 2-54, *Italian Republic v High Authority of the ECSC*, ECLI:EU:C:1954:8. See A. Arena, *The Dawn of the Community System of Judicial Protection: Revisiting the First Two Rulings of the European Court of Justice, 70 Years On*, in *EU-Law Live*, n. 224, March 29, 2025, <https://eulawlive.com/weekend-edition/weekend-edition-no224/>.
15. My translation from the French: «*Contrairement aux droits des personnes privées, dont l'exercice, du moins dans un régime de liberté, n'a d'autres limites (en dehors des interdictions prononcées par la loi) que la nécessité de respecter les droits des autres personnes privées, les droits des autorités publiques, qui sont en réalité des pouvoirs, ne peuvent s'exercer qu'aux fins pour lesquelles ces pouvoirs leur ont été attribués. Ces fins sont évidemment, en premier lieu, l'intérêt général, ce qu'on appelle, le «bien du service», pour lequel l'Administration est faite et qui n'est autre qu'une manifestation du bien commun, fondement de l'ordre social. Mais à cela s'ajoute une notion de spécialité qui est tout simplement commandée par une nécessité de bon ordre, d'organisation. L'Administration a des tâches multiples et variées, et chacun des services publics a une tâche particulière à remplir, un but particulier à poursuivre. Il y a en réalité des administrations au sein de l'Administration avec un grand A. Les pouvoirs attribués à chacune d'elles sont donc limités, eux aussi (même si aucun texte ne le dit), par une finalité qui lui est propre*».
16. Court of Justice, judgment of 12 July 1957, Joined Cases C-7/56 and C-3/57 to C-7/57, *Dinecke Algera, Giacomo Cicconardi, Simone Couturaud, Ignazio Genuardi, Félicie Steichen v Common Assembly of the ECSC*, ECLI:EU:C:1957:7; Opinion ECLI:EU:C:1957:6.
17. Court of Justice, judgment of 15 July 1960, Joined cases 43/59, 45/59 and 48/59, *Eva von Lachmüller, Bernard Peuvrier, Roger Ehrhardt v Commission of the European Economic Community*, ECLI:EU:C:1960:37, p. 476.
18. Court Justice, judgment of 22 March 1961, Joined cases 42 and 49/59, *Société nouvelle des usines de Pontlieue - Aciéries du Temple (S.N.U.P.A.T.) v High Authority of the ECSC*, ECLI:EU:C:1961:5, p. 78.
19. Court Justice, judgment of 12 November 1969, Case 29-69, *Erich Stauder v City of Ulm – Sozialamt*, ECLI:EU:C:1969:57, p. 422.
20. As an exception, Takis Tridimas discusses the issue under the heading “the general principles in the hierarchy of Community rules” in T. Tridimas, *The General Principles of EU Law*, Oxford, OUP, II edition, 2006, pp. 50-51. Differently from me, however, he states that «*they have equivalent status with the founding Treaties*».
21. *De la soumission au droit des règlements autonomes*, published in the Dalloz, 1960 and *De la valeur juridique des principes généraux du droit et autres règles jurisprudentielles du droit administratif*, published in the Dalloz, 1966. Both articles have been published again

- in R. Chapus, *L'administration et son juge*, Paris, Dalloz, 1999, pp. 93-130.
22. Cited above note 20.
 23. Court of Justice, Grand Chamber, judgment of 22 November 2005, Case C-144/04, *Werner Mangold v Rüdiger Helm*, ECLI:EU:C:2005:709, para 74 and 75.
 24. My translation from German.
 25. Court of Justice, judgment of 17 December 1970, Case 11-70, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel*, ECLI:EU:C:1970:114, para 4, emphasis added.
 26. Advocate General Dutheil de Lamothe, Opinion of 2 December 1970, ECLI:EU:C:1970:100, ECR 1140, p. 1146.
 27. Emphasis added.
 28. Explanations relating to the Charter of Fundamental Rights [2007] OJ C303. Emphasis added.
 29. Court of Justice, judgment of 8 May 2019, Case C-230/18, *PI v Landespolizeidirektion Tirol*, ECLI:EU:C:2019:383, paras 56 ff.
 30. 30 This section is taking over some of the developments of D.U. Galetta, J. Ziller, *EU Administrative Law*, Edward Elgar Publishing, 2024, Chapter 6.
 31. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016IP0279>.
 32. Court of Justice, Sixth Chamber, judgment of 15 February 1996, Case C-63/93, *Fintan Duff, Liam Finlay, Thomas Julian, James Lyons, Catherine Moloney, Michael McCarthy, Patrick McCarthy, James O'Regan, Patrick O'Donovan v Minister for Agriculture and Food and Attorney General*, ECLI:EU:C:1996:51, para 20.
 33. Court of Justice, judgment of 14 May 1974, Case 4-73, *J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities*, ECLI:EU:C:1974:51.
 34. Court of Justice, judgment of 15 October 1987, Case 222/86, *Union nationale des entraîneurs et cadres techniques professionnels du football (Unectef) v Georges Heylens and others*, ECLI:EU:C:1987:442.
 35. Court of Justice, Grand Chamber, judgment 3 October 2013, Case C-583/11 P, *Inuit Tapiriit Kanatami and Others v European Parliament and Council of the European Union*, ECLI:EU:C:2013:625.
 36. See above note 26.
 37. Court of Justice, judgment of 29 November 1956, Case 8-55, *Fédération Charbonnière de Belgique v High Authority of the ECSC*, ECLI:EU:C:1956:11.
 38. See above note 25.
 39. Court of Justice, judgment of 13 July 1965, Case 111-63, *Lemmerz-Werke GmbH v High Authority of the ECSC*, ECLI:EU:C:1965:76.
 40. Court of Justice, Third Chamber, judgment of 14 April 2005, Case C-110/03, *Kingdom of Belgium v Commission of the European Communities*, ECLI:EU:C:2005:223, para 30.
 41. General Court (Tenth Chamber, Extended Composition), judgment of 20 January 2021, Case T-758/18, *ABLV Bank AS v Single Resolution Board*, ECLI:EU:T:2021:28, para 135.

42. M. Lawrence, T. Homer-Dixon, S. Janzwood, J. Rockström, O. Renn, J.F. Donges, *Global polycrisis: the causal mechanisms of crisis entanglement*, in *Global Sustainability*, 7, e6, 2024, pp. 1–16, <https://doi.org/10.1017/sus.2024.1>.
43. *Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on The European Preparedness Union Strategy*, JOIN(2025) 130 final, <https://webgate.ec.europa.eu/circabc-ewpp/d/d/workspace/SpacesStore/b81316ab-a513-49a1-b520-b6a6e0de6986/file.bin>.
44. See the book review by F. Casolari, Inge Govaere, Sara Poli (eds.), *EU Management of Global Emergencies: Legal Framework for Combating Threats and Crises*, Leiden and Boston, Brill Nijhoff, 2014, pp. 422, in *The Italian Yearbook of International Law Online*, 2015, pp. 601-608.
45. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster [...].
46. J. Ziller, *Le principe de protection de l'environnement, une perspective de droit comparé - Union européenne, Étude*, EPRS | Service de recherche du Parlement européen- Unité Bibliothèque de droit comparé, PE 767.222 - Janvier 2025, [https://www.europarl.europa.eu/RegData/etudes/STUD/2025/767222/EPRS_STU\(2025\)767222_FR.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2025/767222/EPRS_STU(2025)767222_FR.pdf).
47. A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.
48. P. Thieffry, *Manuel de droit européen de l'environnement*, Bruxelles, Bruylant, 4ème édition 2024, p. 119, my translation from French.
49. See https://eur-lex.europa.eu/search.html?name=browse-by%3Alegislation-in-force&type=named&displayProfile=allRelAllConsDocProfile&qid=1744450715425&CC_1_CODED=15.
50. See in particular T. Vallinder, *The Judicialisation of Politics. A World-Wide Phenomenon: Introduction*, in *International Political Science Review / Revue Internationale de Science Politique*, vol. 15, no. 2, 1994, pp. 91-99, JSTOR, <http://www.jstor.org/stable/1601557>.